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In the

Supreme Court of the United States

OCTOBER TERM, 1969

UNITED STATES OF AMERICA,

Petitioner,

vs.

WILLIAM L. RANDALL, Trustee,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondent

The Scheffer Press, Inc.—ANdover 3-6850

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STATEMENT OF CASE

Neither a transcript of the record nor a summary thereof was provided in the Government's Petition For Review of the Referee in Bankruptcy nor one considered necessary by the referee (A.49).

On August 18, 1967 the present bankrupt filed a petition for relief as debtor in possession under Chapter XI of the Bankruptcy Act. On August 24, 1967 orders were entered allowing the debtor to remain in possession and requiring that it file monthly reports, keep separate books and records of its operation as of August 18, 1967 and that it set up separate bank accounts so as to make proper provision for general, payroll and tax matters. The

debtor conducted the business until November 22, 1967 at which time it was adjudged a bankrupt.

During the foregoing period of operation the debtor failed to file regular monthly reports and failed to properly set up the bank accounts as ordered with the result that the sum of $1,075.02 claimed by the government to be due for accrued withholding taxes was not deposited in the tax account. What happened to this sum does not appear of record.

Pursuant to order of court the bankrupt's physical assets were sold and the price realized from the sale exceeded by very little the amount of the government's tax claim. The government now seeks to subject these funds to a special trust. The money realized from the trustee's sale will be the only substantial asset of the estate so that if the government's trust fund theory is upheld there will not be sufficient funds remaining in the estate to meet administrative expenses.

REASONS FOR NOT GRANTING WRIT

While differing with the Government's position that the Court of Appeals erroneously decided an important question involving the interaction of the Bankruptcy Act, the federal tax law and the Judicial Code, the respondent does recognize a substantial conflict might be thought to exist among the Second, Sixth and Ninth Circuits, as asserted by the Government, and the ruling below, which, in turn, is supported by *United States* v. *Kalishman*, 8th Cir., 346 F.2d 514 (1965); *In Re Connecticut Motor Lines, Inc.*, 3rd Cir., 336 F. 2d 96 (1964); 3A *Collier On Bankruptcy* § 64.02, n. 27 at 2071.

However, *Nicholas* v. *United States*, 384 U.S. 678 (1966); seems to have adequately met and properly settled this question in the broad sweep of its holding, along with those in *Guarantee Title & Trust Co.* v. *Title Guaranty Co.*, 224 U.S. 152 and *Davis* v. *Pringle*, 268 U.S. 315.

The economic effect of the adoption of the government's position would be to stultify the administration of a substantial number of estates.

CONCLUSION

Unless it appears to the Court that the ruling below and the consonant rulings in the 8th and 3rd Circuits are not warranted by its own earlier decisions, referred to hereabove, in cognate matters, or, if warranted thereby, are not sufficiently dispositive of the issue, the writ ought not be granted.

Respectfully submitted:

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